

**MIRIAM TAUBER LAW**

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March 8, 2018

**Via ECF**

Hon. J. Paul Oetken, U.S.D.J. (S.D.N.Y.)  
40 Foley Square, New York NY 10007

**Re: *Rubenstein v. Berkowitz et. al.*, No. 1:17 Civ. 00821-JPO (S.D.N.Y.):**

Dear Judge Oetken:

In advance of the conference this Friday, March 9, 2018, Plaintiff seeks the following relief as to which defendants Bruce R. Berkowitz and Fairholme Capital Management, L.L.C. (“Fairholme”) consent:

(1) An Order pursuant to Fed. R. Civ. P. 15(a)(2) granting Plaintiff leave to amend and file the proposed Second Amended Complaint (“SAC”) attached to this letter motion. Plaintiff’s proposed SAC seeks recovery of short swing trading profits allegedly realized in the Fairholme managed accounts from individual Fairholme former and current managed account owners, and will withdraw the allegation that Fairholme or Berkowitz have a pecuniary interest in the managed accounts. Plaintiff will not name Berkowitz or Fairholme as parties in the proposed SAC.

(2) An Order pursuant to Fed. R. Civ. P. 41(a)(2) dismissing the First Amended Complaint against Berkowitz and Fairholme, with prejudice.

The parties are of course prepared to appear on Friday, but also believe that given this agreed process the conference could be adjourned.

Respectfully yours,

*s/ Miriam Tauber*

Miriam Tauber

**cc (by ECF and email):**

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